IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MACA.No. 34 of 2004()

OPMV.2325/1995 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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: APPELLANT/CLAIMANT:

SANTHOSH KUMAR, S/O. SREENIVASAN,
`SREENIVAS', THAZHAM WARD, EAST KALLADA, KOLLAM.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS: RESPONDENTS:
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1. S.PRADEEP, THOPPIL VEEDU, ALAMCHERRY,
AEREER, ANCHAL

2. JAYAKUMAR, S/O. PURUSHOTHAMAN,
CHARUVILA PUTHEN VEEDU, MULAVANA, KUNDARA,KOLLAM.

3. THE BRANCH MANAGER,
UNITED INDIA INSURANCE COMPANY LIMITED, CALICUT.

R3 BY ADV. SRI.P.R.RAMACHANDRA MENON

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S. Radhakrishnan &
T.R. Ramachandran Nair, JJ.

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M.A.C.A.NO.34 OF 2004

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Dated this the 3rd day of December, 2007

JUDGMENT

Radhakrishnan, J.

The claimant is the appellant. The accident is not disputed. So also, the insurance coverage. The only question is whether the amount of compensation awarded by the Tribunal is just and reasonable. Paragraph 7 of the award of the Tribunal elaborately dealt with the details of the injuries sustained by the claimant. Ext.A16 is the certificate issued by the doctor certifying that the claimant has sustained 30% permanent disability. However, the Tribunal has considered only 20% for calculating the compensation for loss of earning power. We find no reason to discard the certificate issued by the doctor. The doctor who has issued Ext.A16 certificate, was also examined. In such circumstances, we feel that 30% disability is to be taken into consideration. Hence, the claimant will be entitled to a sum of Rs.1,16,640/- as compensation for loss of earning power, instead of Rs.78,000/- awarded by the Tribunal. For pain and suffering, only a sum of Rs.15,000/- was awarded. Considering the fact that the claimant was hospitalised for a number of days and considering the

nature of injuries, an additional amount of Rs.10,000/- will be adequate compensation for pain and suffering. No amount has been awarded for disfiguration. Considering the fact that the claimant was aged 28 years at the time of accident and his marriage prospects have been adversely affected, an amount of Rs.15,000/- is awarded for disfiguration. Therefore, the claimant is entitled to an additional compensation of Rs.53,640/-.

2. The Tribunal has correctly found that the claimant has also contributed to the accident. It was found that the claimant had contributed to the accident to the extent of 60%. Hence, he is entitled to 40% of the additional amount of compensation. Learned counsel for the claimant contended that the claimant has not contributed to the accident. We have perused Ext.A2 which is the copy of the mahazar prepared by the Asst. Sub Inspector of Police, Kizhakke Kallada. It fully indicates that the accident occurred due to the negligence of the driver of the bus as well as the scooter. There is no contra evidence. In such circumstances, the Tribunal was justified in holding that the claimant had also contributed to the accident. Therefore, we sustain the finding of the Tribunal regarding contributory negligence.

3. In such circumstances, the claimant is entitled to an additional

compensation of Rs.25,456/- which we round off as Rs.26,000/-. It will bear interest at 7.5% from the date of petition till realisation.

The appeal is disposed of as above.

(K.S. Radhakrishnan, Judge.)

(T.R. Ramachandran Nair, Judge.)

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K.S. Radhakrishnan &
T.R. Ramachandran Nair, JJ.

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No.

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JUDGMENT

November, 2007.